IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

FILED
DEC 29 2014
CLERK, US DISTRICT COURT
NEWPORT NEWS, VA

REGINALD C. MITCHELL
and
MARY E. MITCHELL ,

Plaintiffs,

JURY DEMANDED

v.

Civ. No. 4:14cv169

OCWEN LOAN SERVICING, LLC
SERVE: CORPORATION SERVICE COMPANY
Bank of America Center, 16th Floor
1111 East Main Street
RICHMOND VA 23219

and

EXPERIAN INFORMATION SOLUTIONS, INC.,
SERVE: David N. Anthony, Registered Agent
1001 Haxall Point
Richmond, VA 23219

and

TRANS UNION, LLC.,
SERVE: Corporation Service Company, Registered Agent
11 S. 12th Street
Richmond, VA 23218

and

EQUIFAX INFORMATION SERVICES, LLC.,
SERVE: Corporation Service Company, Registered Agent
11 S. 12th Street
Richmond, VA 23218

Defendants.

COMPLAINT

Plaintiffs, REGINALD C. MITCHELL (hereafter "Plaintiff" or "Mr. Mitchell") and MARY ELIZABETH MITCHELL (hereafter "Plaintiff" or "Mrs. Mitchell"), by counsel, for their Complaint against Defendants, allege as follows:

PRELIMINARY STATEMENT

1. This is an action for actual, statutory and punitive damages, costs and attorney's fees brought pursuant to 15 U.S.C. §§ 1681 *et seq.* (Federal Fair Credit Reporting Act or "FCRA"); 12 U.S.C. § 2601 *et seq.* (Real Estate and Settlement Procedures Act or "RESPA"); and breach of contract for the implied covenant of good faith and fair dealing.

JURISDICTION

2. The jurisdiction of this Court is conferred by the FRCA, 15 U.S.C. § 1681(p), the RESPA, 12 U.S.C. §2605(f), and 28 U.S.C. §1331.

3. This court also has jurisdiction over the state law claims by supplemental jurisdiction under 28 U.S.C. §1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) inasmuch as all of the Defendants maintain registered offices within the boundaries of the Eastern District of Virginia, Plaintiff resides in this District and Division and significant part of the Plaintiff's claims occurred in Virginia.

PARTIES

5. The Plaintiff, REGINALD C. MITCHELL is a natural person and a consumer as defined by 15 U.S.C. § 1681a(c).

6. The Plaintiff, MARY E. MITCHELL is a natural person and a consumer as defined by 15 U.S.C. § 1681a(c).

7. Upon information and belief, OCWEN LOAN SERVICING LLC ("OCWEN") is a foreign limited liability company doing business as a mortgage originator and servicer. Sometime after June 6, 2011, OCWEN acquired the Litton Loan Servicing, LP's entire mortgage servicing unit amid ongoing criticism of Litton's mortgage foreclosure practices. At relevant times alleged in the Complaint, OCWEN was and is a mortgage servicer under RESPA and a furnisher governed by the FCRA.

8. Upon information and belief, LITTON LOAN SERVICING, LP ("LITTON") is a foreign limited partnership with a currently registered agent in Virginia. At relevant times alleged in this Complaint, Litton was a mortgage servicer under RESPA and furnisher as governed by the FCRA.

9. Upon information and belief, EXPERIAN INFORMATION SOLUTIONS, INC. ("Experian"), is a corporation authorized to do business in the Commonwealth of Virginia through its registered offices in Richmond, Virginia.

10. Upon information and belief, Experian is a "consumer reporting agency," as defined by 15 U.S.C. § 1681(f). Upon information and belief, Experian is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. § 1681(d) to third parties.

11. Upon information and belief, Experian disburses such consumer reports to third parties under contract for monetary compensation.

12. Upon information and belief, TRANS UNION, LLC. ("Trans Union") is a corporation authorized to do business in the Commonwealth of Virginia through its registered offices in Richmond, Virginia.

13. Upon information and belief, Trans Union is a "consumer reporting agency," as defined in 15 U.S.C. §1681(f). Upon information and belief, Trans Union is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681(d) to third parties.

14. Upon information and belief, Trans Union disburses such consumer reports to third parties under contract for monetary compensation.

15. Upon information and belief, EQUIFAX INFORMATION SYSTEMS, LLC. ("Equifax") is a corporation authorized to do business in the Commonwealth of Virginia through its registered offices in Richmond, Virginia.

16. Upon information and belief, Equifax is a "consumer reporting agency," as defined in 15 U.S.C. §1681(f). Upon information and belief, Equifax is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681(d) to third parties.

17. Upon information and belief, Equifax disburses such consumer reports to third parties under contract for monetary compensation.

FACTS

18. Mr. and Mrs. Mitchell have lived in their Hampton, Virginia home for more than 22 years.

19. On or about April 30, 1992, Mr. and Mrs. Mitchell executed a Note in the principal sum of $ 62,435.00 and Deed of Trust secured by their primary residence and backed by the Federal Housing Administration ("FHA").

20. Upon information and belief, Litton Loan Servicing LLC was the loan servicer from the inception of the loan through October of 2011 when servicing was transferred to Ocwen Loan Servicing LLC.

21. Ocwen is the current mortgage servicer for the Mitchells' mortgage.

22. Over the life of the loan, the Mitchells have experienced financial hardship.

23. Over the life of the loan, the Mitchells' loan has been in periods of forbearance.

24. Over the life of the loan, the Mitchells have disputed the loan servicers' accounting of their loan, and have on numerous occasions requested a proper accounting of their loan, but the loan servicers have not provided a satisfactory loan accounting.

25. Over the life of the loan, Litton Loan Servicing, and later Ocwen, have made numerous mistakes in determining the status of the loan, the principle balance, the terms applicable to the loan, and the priority by which payments are to be applied.

26. Over the life of the loan, Litton Loan Servicing, and later Ocwen, have sent the Mitchells inaccurate and conflicting statements and requests for payment.

27. In the past, the Mitchells' have retained counsel in an attempt to correct the accounting on the loan.

28. The Mitchells attempted to comply with payment instructions from Litton Loan Servicing, then Ocwen, by making their mortgage according to the statements they received from their servicers.

29. They often paid their mortgage at Wal-Mart by money order.

30. Wal-Mart stopped accepting their mortgage payments on behalf of Ocwen, despite the Mitchells' attempt to pay the mortgage there as they customarily had been doing.

31. The Mitchells have had to make claims to their homeowner's insurance carriers for covered damage to the property.

32. When the Mitchells received insurance check(s), they were unable to negotiate the check to pay for the repairs because the insurance checks were written jointly to the Mitchells and their servicers. When they turned the insurance checks over to the servicers, the servicers kept the money.

33. Despite their request for information about how that insurance money was applied to their loan, neither Ocwen nor Litton have ever provided information about what was done with insurance money.

34. On or about December of 2009, Mr. Mitchell contacted Litton Loan Servicing, (subsequently Ocwen), and submitted a completed loan modification application.

35. At the time they applied for the loan modification under HAMP, the Mitchells did not know the status of their mortgage account, but were probably not current on their mortgage.

36. On or about December 28, 2009, Litton Loan Servicing sent correspondence to the Mitchells that their loan modification application had been received, but that it was missing documentation including the Hardship Affidavit, Completed IRS Form 4506-T, a signed copy of the most recent federal income tax returns, two signed copies of the Workout Plan. At the bottom of the correspondence reads the notice "LITTON LOAN SERVICING IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT

YOUR DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE." The Mitchells responded to Litton Loan Servicing with the requested documents.

37. On or about January 13, 2010, Litton Loan Servicing sent another letter to the Mitchells informing them that they must complete a Financial Information Form in order to establish a repayment plan. The Mitchells completed the Financial Information Form and returned it to Litton Loan Servicing.

38. The Mitchells request for a loan modification was denied. The Mitchells requested an appeal of the decision, but were told by Litton Loan Servicing that they had to enter a repayment plan or submit a new application for a loan modification to avoid foreclosure.

39. Upon information and belief, Litton Loan Servicing knew that its handling of borrower loan modification applications, borrower documents, and borrower mortgage accounts was at a minimum, inaccurate, but more likely, incompetent and purposefully designed to cause acceleration and foreclosure, depriving borrowers of their rights and property.

40. Thereafter, the Mitchells received a notice of intent to accelerate and foreclose, which falsely stated that the amount to reinstate the loan and the amount to cure the default. Upon information and belief, Litton Loan Servicing did not know what terms governed the loan at the time they notified the Mitchells of the intent to accelerate. The Mitchells had been disputing the terms, fees, interest, and application of insurance proceeds. This notice of intent to foreclose caused Mr. and Mrs. Mitchell to experience anxiety, panic, confusion, helplessness. The Mitchells had attempted every way they

knew how to get Litton to provide up to date and accurate information about their loan, which neither Litton did.

41. On December 27, 2013, Mr. Mitchell received a letter from Brock & Scott, PLLC, a debt collector foreclosure law firm. Brock & Scott informed Mr. Mitchell that Ocwen referred the loan for foreclosure and the amount owed as of that date was $82,110.91.

42. Mr. Mitchell had been trying to work with Ocwen to obtain information about his note, deed of trust, payments, escrows, insurance payments, and otherwise work out the current status of his loan. Now, he was being told that he had been referred to foreclosure.

43. He filed a *pro se* lawsuit in federal court, which he eventually dismissed.

44. On approximately April 10, 2014, Mr. and Mrs. Mitchell sent a Qualified Written Request (QWR) to the address that Ocwen directs borrowers to send QWRs: Ocwen Research Department, P.O. Box 24736, West Palm Beach, VA 33416-4736. In the QWR, Mr. & Mrs. Mitchell disputed the accuracy of the mortgage account and requested specific information about their mortgage to which they are entitled.

45. Ocwen did not respond to the Mitchells' QWR.

46. Upon information and belief, Ocwen does not know the terms that govern the Mitchells' loan, the outstanding principal balance, the interest rate applicable to the loan, the amount of escrows. Ocwen has not provided any information in response to the Mitchells' QWR to demonstrate that it has maintained accurate records.

47. The Mitchells obtained their consumer reports from consumer reporting agencies (CRAs) TransUnion, Equifax and Experian.

48. Each of the three CRAs were reporting the Mitchells loan to be 180 days or more past due and in default.

49. On or about July 25, 2014, after more years of frustration and stress, Mr. Mitchell sent a letter to Ocwen, Litton, Equifax, Trans Union and Experian, disputing the accuracy of their reporting the Ocwen mortgage on his consumer report pursuant to the Fair Credit Reporting Act.

50. On July 25, 2014, Mrs. Mitchell sent a letter to Experian disputing the accuracy of their reporting of the Ocwen mortgage on her consumer report pursuant to the Fair Credit Reporting Act.

51. Mr. Mitchell supplied specific information to each of the consumer reporting agencies and loan servicers that the account being reported was inaccurate and that despite his many attempts to get Ocwen to account for the mortgage, they had not done so, and therefore Ocwen could not possibly know how to accurately account for the loan.

52. Mrs. Mitchell supplied specific information to Experian that each delinquency being reported was inaccurate and that despite her husbands many attempts to get Ocwen to account for the mortgage, they had not done so, and therefore Ocwen could not possibly know how to accurately account for the loan.

53. Ocwen, Equifax, Trans Union and Experian all received the Mitchells' disputes.

54. On August 6, 2014, Equifax sent to Mr. Mitchell the results of his dispute investigation: "Historical account information was deleted from this account. The status of this account has been updated. The prior paying history on this account has been updated. Additional information has been provided from the original source regarding

this item." However, the account is still reporting as 180 days past due as of November 2011. The Status shows that the account: "Pays as Agreed" and that "Foreclosure Process started." It shows that the balance is $49,669, that the scheduled payment is $767, and that the date of last activity is July of 2010.

55. Equifax is reporting inaccurate, derogatory payment history for Mr. Mitchell, with 180 days or more past due and the account delinquent since November of 2011, and that despite "Pays as Agreed" the "Foreclosure Process Started." It has not done an investigation into Mr. Mitchell's specific accuracy dispute.

56. On August 7, 2014, TransUnion sent to Mr. Mitchell the results of the dispute investigation: NEW INFORMATION BELOW. Instead of actually investigating or correcting the inaccurate and derogatory information, TransUnion reported the account 120 days past due beginning in November of 2011 and "unknown" payment history since February of 2014. In pay status, TransUnion reports "paid or paying as agreed" with foreclosure initiated. The balance due reporting is $49,669.

57. Experian refused to process Mr. Mitchell's dispute. Instead of investigating his detailed dispute, on July 29, 2014, Experian sent Mr. Mitchell a letter stating that it would not investigate his dispute because his dispute did not include a social security number. It further required him to provide his full name, middle initial, and generation, previous addresses for the past two years, social security number, date of birth, copy of a government issued i.d., and a copy of a utility bill, bank or insurance statement. It went on to require him to state the specific reason he believes the information to be inaccurate before it will investigate his dispute.

58. Experian has been sued repeatedly for refusing to investigate consumer's disputes by claiming that the consumer did not provide sufficient identification information, including within the Eastern District of Virginia. *See, e.g., James v. Experian Info. Sols.*, 3:12cv902-REP; *Schneider v. Experian Info. Sols.*, 3:05CV717-REP; *Duff v. Experian Info. Sols.*, 3:05CV82-REP; *Scroggins v. Experian Info. Sols.*, 3:07CV552-REP; *Restifo v. Experian Info. Sols.*, 3:08CV509-REP.

59. Experian does not make money by processing disputes from consumers. In fact, dispute processing is nothing but an expense. As a result, Experian set up its dispute processing function in Chile for a small fraction of the amount that Experian previously spent on disputes when they were processed in the United States. It is in Experian's interest to reject disputes for any possible reason in order to save money.

60. Experian informed Mr. Mitchell it would not process his dispute unless he overcame a number of obstacles, none of which are permitted or required by the FCRA. The Defendant actually sells credit reports about consumers, including Mr. Mitchell, to its banking industry customers when those customers provide as little as the consumer's first name, last name and previous address.

61. Experian sells credit reports to banking industry and debt collector customers without requiring the social security number for the subject of the requested consumer report.

62. Experian sells credit reports to banking industry and debt collector customers without requiring a copy of a utility bill, bank statement, or insurance statement for the subject of the requested consumer report.

63. Experian sells credit reports to banking industry and debt collector customers without requiring the date of birth for the subject of the requested consumer report.

64. Experian sells credit reports to banking industry and debt collector customers without requiring a copy of government issued identification for the subject of the requested consumer report.

65. Upon information and belief, Experian creates such hurdles in order to reduce the number of disputes it has to investigate.

66. Experian makes money selling credit reports.

67. Experian does not make money by processing disputes for consumers who request an investigation of inaccurate information in their Experian reports.

68. Therefore, according to Experian's unjustifiable and onerous requirements, a consumer who does not have access to a photocopier or who does not have a government issued identification, utility, bank or insurance statement in his or her own name could not have his or her dispute processed at all.

69. On August 7, 2014, Experian sent to Mrs. Mitchell the results of the dispute investigation: "updated." "A change was made to this item; review this report to view the change. If ownership of the item was disputed, then it was verified as belonging to you." Experian is reporting Mrs. Mitchell as 180 days past due as of November 2011,with No Data reported February 2014 through July 2014. Foreclosure proceedings started. It also shows Mrs. Mitchell with an account balance of $49,669 as of August 2014 in the Credit items sections, but in the Payment History section, the AB (Account Balance) is noted as $51,488. The Payment History Section shows AAP (Actual Amount Paid) that she made payments in August, September, October, and November of 2012; January, February,

April, May, June, July, August, and September of 2013; no data for March, October, November and December of 2013.

70. Despite the disputes that Mr. and Mrs. Mitchell sent to the consumer reporting agencies and directly to Ocwen and Litton, the inaccurate and derogatory reporting remains on their consumer reports and Ocwen continues to try to collect money, fees and interest that it cannot demonstrate that the Mitchells owe.

COUNT ONE: BREACH OF CONTRACT FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
Mary Mitchell and Reginald Mitchell

(OCWEN)

71. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

72. A covenant of good faith and fair dealing exists in every valid Virginia contract, including notes and deeds of trust pertaining to real property such as the note and deed of trust pertaining to Plaintiff's property. A breach of the covenant of good faith and fair dealing is a breach of the underlying contract.

73. Ocwen failed to perform its duty of good faith and fair dealing with respect to each of the Plaintiffs by such actions as mismanagement of the Plaintiffs mortgage account; failing to safeguard important loan documentation that sets forth the terms and conditions of the loan; sending the Mitchells deceitful and confusing statements that no payments were due and owing on their mortgage or that payments were not due until far in the future for the purpose of putting the Mitchells into arrearage so that Litton, and then Ocwen, could foreclose; for failing to accurately keep the Mitchells' account in order for the purpose of forcing the Mitchells into foreclosure; failing to honestly

consider the loan modification applications submitted by the Mitchells; offering false reasons for unilaterally closing their loan modification application so that the Mitchells would feel that they had no option but to accept a new loan agreement. However, Ocwen could not account for the principal balance it alleged that the Mitchells owed, and the Mitchells disagreed with the amounts and terms of the proposed new loan agreement.

74. Ocwen's breach of its duty to act in good faith and deal fairly with Plaintiffs breached the Deed of Trust.

75. Plaintiffs suffered actual damages, including but not limited to, the accrual of default servicing fees and the assessment of late and other fees, including taxes not owed by the Plaintiffs. They are threatened with additional harm from Defendant's breach because Ocwen has not corrected its inaccurate accounting of Plaintiff's account, and has threatened to foreclose despite the Plaintiffs' requests for documentation supporting Ocwen's purported accounting of the loan.

76. To the extent actual damages will not fully and fairly compensate Plaintiffs, they are also entitled to specific performance and other appropriate injunctive relief.

COUNT TWO: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681e(b)
Mary Mitchell
(EXPERIAN)

Reginald Mitchell
(EXPERIAN, TRANS UNION and EQUIFAX)

77. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

78. Experian, Trans Union, and Equifax each violated 15 U.S.C. §1681e(b) by failing to establish and/or to follow reasonable procedures to assure maximum possible

accuracy in the preparation of the Reginald Mitchell's credit reports and credit files it published and maintained concerning the Plaintiffs.

79. As a result of Experian's, Trans Union's, and Equifax's violations of 15 U.S.C. §1681e(b) with respect to Mr. Mitchell, he suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

80. As a result of Experian's violation of 15 U.S.C. § 1681e(b) with respect to Mrs. Mitchell, she suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

81. The violations by Experian, Trans Union, and Equifax were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles the Plaintiffs to recovery under 15 U.S.C. §1681o.

82. Plaintiffs are entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian, Trans Union, and Equifax in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT THREE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i(a)(1)

Mary Mitchell
(EXPERIAN)

Reginald Mitchell
(EXPERIAN, TRANS UNION and EQUIFAX)

83. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

84. Experian, Trans Union, and Equifax each violated 15 U.S.C. §1681i(a)(1) by failing to conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information or delete the item from each of the Mitchell's credit files.

85. As a result of Experian's, Trans Union's, and Equifax's violations of 15 U.S.C. §1681i(a)(1), Mr. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

86. As a result of Experian's violations of 15 U.S.C. §1681i(a)(1), Mrs. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

87. The violations by Experian, Trans Union, and Equifax were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles Mr. Mitchell to recovery under 15 U.S.C. §1681o.

88. The violations by Experian as to Mrs. Mitchell were willful, rendering it individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles Mrs. Mitchell to recovery under 15 U.S.C. §1681o.

89. Mrs. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

90. Mr. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian, Trans Union, and Equifax in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT FOUR: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i(a)(2)(A)

Mary Mitchell
(EXPERIAN)

Reginald Mitchell
(EXPERIAN, TRANS UNION and EQUIFAX)

91. The Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

92. Experian, Trans Union, and Equifax each violated 15 U.S.C. §1681i(a)(2)(A) by failing to provide Ocwen with all the relevant information regarding the Mitchell's disputes.

93. As a result of Experian's, Trans Union's, and Equifax's violations of 15 U.S.C. §1681i(a)(2), Mr. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

94. As a result of Experian's violations of 15 U.S.C. §1681i(a)(2), Mrs. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

95. The violations by Experian, Trans Union, and Equifax were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles Mr. Mitchell to recover under 15 U.S.C. §1681o.

96. The violations by Experian as to Mrs. Mitchell were willful, rendering it individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian was negligent, which entitles the Mrs. Mitchell to recovery under 15 U.S.C. §1681o.

97. Mr. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian, Trans Union, and Equifax in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

98. Mrs. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT FIVE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i(a)(4)
Mary Mitchell (EXPERIAN)

Reginald Mitchell
(EXPERIAN, TRANS UNION and EQUIFAX)

99. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

100. Experian, Trans Union, and Equifax each violated 15 U.S.C. §1681i(a)(4) by failing to review and consider all relevant information submitted by Mr. and Mrs. Mitchell.

101. As a result of Experian's, Trans Union's, and Equifax's violations of 15 U.S.C. §1681i(a)(4), Mr. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

102. As a result of Experian's violations of 15 U.S.C. §1681i(a)(4), Mrs. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

103. The violations by Experian, Trans Union, and Equifax were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles Mr. Mitchell to recovery under 15 U.S.C. §1681o.

104. The violations by Experian as to Mrs. Mitchell were willful, rendering each it individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian was negligent, which entitles Mrs. Mitchell to recovery under 15 U.S.C. §1681o.

105. Mr. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian, Trans Union, and Equifax in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

106. Mrs. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT SIX: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i(a)(5)(A)

Mary Mitchell
(EXPERIAN)

Reginald Mitchell
(EXPERIAN, TRANS UNION and EQUIFAX)

107. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

108. Experian, Trans Union, and Equifax each violated 15 U.S.C. §1681i(a)(5)(A) by failing to promptly delete the disputed inaccurate items of information from each of the Mitchell's credit files or modify the item of information upon a lawful reinvestigation.

109. As a result of Experian's, Trans Union's, and Equifax's violations of 15 U.S.C. §1681i(a)(5)(A), Mr. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

110. As a result of Experian's violations of 15 U.S.C. §1681i(a)(5)(A), Mrs. Mitchell suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

111. The violations by Experian, Trans Union, and Equifax as to Mr. Mitchell were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian, Trans Union, and Equifax were negligent, which entitles the Plaintiff to recovery under 15 U.S.C. §1681o.

112. The violations by Experian as to Mrs. Mitchell were willful, rendering each of the Defendants individually liable for punitive damages in an amount to be

determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Experian was negligent, which entitles the Plaintiff to recovery under 15 U.S.C. §1681o.

113. Mr. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian, Trans Union, and Equifax in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

114. Mrs. Mitchell is entitled to recover actual damages, statutory damages, costs and attorney's fees from Experian in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT SEVEN: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(A)
Reginald Mitchell and Mary Mitchell

(OCWEN)

115. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

116. On at least one occasion within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(A) by failing to fully and properly investigate the Plaintiffs' disputes.

117. When the Plaintiffs mailed their detailed, written disputes and enclosures to the consumer reporting agencies ("CRAs"), they use a dispute system named, "e-Oscar," which has been adopted by the credit reporting agencies and by their furnisher-customers such as Ocwen. It is an automated system and the procedures used by the CRAs are systemic and uniform.

118. When a CRA receives a consumer dispute, it (usually via an off-shore, outsource vendor), translates that dispute into an "ACDV" form.

119. The ACDV form is the method by which Ocwen has elected to receive consumer disputes pursuant to 15 U.S.C. § 1681i(a).

120. It is extremely rare – certainly less than 1% of the time – that Ocwen will receive a consumer's dispute sent through the CRAs other than through the e-Oscar system.

121. On information and belief, the Mitchells allege that to date Ocwen has never complained to the CRAs about the amount of information it receives regarding a consumer dispute through the e-Oscar system or through ACDVs.

122. If Ocwen receives a consumer dispute ACDV form, it is aware that it may also contact the CRA that sent it to obtain more information regarding a consumer's dispute.

123. Based on the manner in which the CRAs responded to – or did not respond to – each of the Mitchell's disputes, representing that Ocwen had "verified" the supposed accuracy of its reporting, Plaintiffs allege that Experian, Equifax and Trans Union did in fact forward the Plaintiffs' dispute via an ACDV to Ocwen.

124. Ocwen understood the nature of the Plaintiffs' disputes when it received the ACDVs from Experian, Equifax and Trans Union.

125. When Ocwen received the ACDVs from Experian, Equifax, and Trans Union, it as well could have reviewed its own system and previous communications with the Mitchells and discovered that Ocwen in fact had none of the documents or account history that it could prove or disprove that they had made payments on their mortgage in all the months that they disputed, which months reflected that no payment at all was made on the Plaintiffs' consumer reports.

126. Notwithstanding the above, Ocwen follows a standard and systemically unlawful process when it receives the ACDV dispute. Basically, all Ocwen does is review its own internal computer screen for the account and repeat back to the ACDV system the same information Ocwen already had reported to the CRAs.

127. When Ocwen receives a consumer dispute through e-Oscar, it does not conduct a substantive review of any sort to determine whether or not the information already in its computer system is itself accurate.

128. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(A), the Mitchells suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

129. The violations by Ocwen were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Ocwen was negligent, which entitles the Mitchells to recovery under 15 U.S.C. §1681o.

130. The law in this District, the Fourth Circuit, and even nationally has long ago been articulated to require a detailed and searching investigation by a creditor when it receives a consumer's FCRA dispute through a CRA.

131. Ocwen was aware of the *Johnson v. MBNA* FCRA decision by the Fourth Circuit when it followed the ACDV procedures used regarding the Plaintiff's dispute.

132. Ocwen has been sued numerous times for its alleged failures to conduct lawful FCRA investigations.

133. On information and belief, the Mitchells allege that the procedures followed regarding the Plaintiffs' FCRA disputes through e-Oscar were the procedures that Ocwen intended its employees or agents to follow.

134. On information and belief, the Plaintiff alleges that Ocwen's employee or agent did not make a mistake (in the way in which he or she followed Ocwen's procedures) when he or she received, processed and responded to the Experian, Equifax, and Trans Union's ACDVs.

135. On information and belief, the Plaintiff alleges that Ocwen has not materially changed its FCRA investigation procedures after learning of its failures in this case.

136. The Mitchells are entitled to recover actual damages, statutory damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT EIGHT: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(B)
Reginald Mitchell and Mary Mitchell

(OCWEN)

137. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

138. On one or more occasions within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(B) by failing to review all relevant information provided by the consumer report agencies.

139. As Plaintiff detailed in Count Seven, Ocwen has elected to use the e-Oscar system for its FCRA disputes received through the CRAs.

140. Ocwen is aware of the meaning of the several dispute codes used by the CRAs in e-Oscar.

141. Ocwen does not contend that the ACDV system is an inadequate means to receive FCRA disputes through the CRAs.

142. Ocwen understood the Mitchells' disputes stated that they made mortgage payments in months that Ocwen reported no payments were made and provided detailed information about the reason he felt that the payments had not been properly applied despite his diligent attempt to communicate with Ocwen about the mortgage.

143. Nevertheless, Ocwen ignored such information and instead simply regurgitated the same identifying information it had previously reported to the CRAs.

144. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(B), the Plaintiffs suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

145. The violations by Ocwen were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Ocwen was negligent, which entitles the Plaintiffs to recovery under 15 U.S.C. §1681o.

146. Plaintiffs are entitled to recover actual damages, statutory damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT NINE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(C) and (D)
Reginald Mitchell and Mary Mitchell

(OCWEN)

147. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint (particularly though not limited to as pled in the "Fact" section of the Complaint and previous Counts).

148. On one or more occasions within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(C) and (D) by publishing the Ocwen representations within Plaintiffs' credit files with Experian, Trans Union, and Equifax without also including a notation that this debt was disputed and by failing to correctly report results of an accurate investigation to each credit reporting agency.

149. Specifically, Ocwen failed to add the "XB" code to the CCC (Compliance Condition Code) field in the ACDV dispute forms when it responded to Experian, Equifax, and Trans Union.

150. On information and belief, Plaintiffs allege that Ocwen rarely if ever adds the XB code or other notation that an account is disputed when it responds to e-Oscar ACDVs.

151. Ocwen knew that the Plaintiffs disputed the subject account because they had twice applied for a loan modification, previously and on multiple occasions disputed the debt directly Ocwen and its agents.

152. The Plaintiff's dispute was, at a minimum, *bone fide*.

153. In fact, the Plaintiffs' disputes were justified because they had made mortgage payments at times that Ocwen and the CRAs reported no payments had been made and showed arrearages when Ocwen did not have documentation to determine the note and deed of trust that governed the loan, whether and when it was in forbearance or

other type of special payment plan, whether the note was backed by the FHA, not to mention whether the Mitchell's loan was delinquent or in default.

154. Ocwen was aware of the *Saunders v. B.B. & T.* FCRA decision by the Fourth Circuit when it followed the ACDV procedures used regarding the Plaintiff's dispute.

155. Ocwen has been sued for its alleged failures to note its account as disputed when responding to a FCRA dispute.

156. On information and belief, the Plaintiff alleges that the procedures followed regarding the Plaintiff's FCRA disputes through e-Oscar were the procedures that Bank of America intended its employees or agents to follow.

157. On information and belief, the Plaintiffs allege that Ocwen's employee or agent did not make a mistake (in the way in which he or she followed Ocwen's procedures) when he or she received, processed and responded to the Experian, Equifax, and Trans Union's ACDVs and did not include the XB code in the CCC field.

158. On information and belief, the Plaintiffs allege that Ocwen has not materially changed its FCRA investigation procedures regarding the CCC field in ACDVs after learning of its failures in this case.

159. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(C) and (D), the Plaintiffs suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

160. The violations by Ocwen were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In

the alternative, Ocwen was negligent, which entitles the Mitchells to recovery under 15 U.S.C. §1681o.

161. The Mitchells are entitled to recover actual damages, statutory damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT TEN: VIOLATION OF REAL ESTATE AND SETTLEMENT PROCEDURES ACT
12 U.S.C. § 2605(e)
Mary Mitchell and Reginald Mitchell

(OCWEN)

162. Plaintiffs reallege and incorporate all other factual allegations set forth in the Complaint.

163. On one or more occasions within the past two years, by example only and without limitation, Plaintiffs made a qualified written request to Ocwen insisting that it conduct an investigation to correct inaccurate account information, inaccurate credit reporting, inaccurate charges to their account, and to provide information regarding their loan.

164. Plaintiffs made qualified written requests in July 2013. Plaintiff's written communications were sent to the address at which they were instructed to send such requests by Ocwen.

165. Ocwen provided no response at all to the Mitchells' QWR.

166. Ocwen violated the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e), by:

a. Failing to timely conduct an appropriate investigation of Plaintiffs' inquiries;

b. Failing to conduct any investigation whatsoever regarding Plaintiffs' inquiries;

c. Failing to timely provide Plaintiffs with a true and accurate written explanation or clarification of the Plaintiff's legitimate questions regarding his loan;

d. Continuing to report information regarding allegedly overdue payments to the national credit bureaus.

167. As a result of Ocwen's violations of 12 U.S.C. § 2605(e), the Plaintiffs suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

168. Ocwen is liable for actual damages in an amount to be determine by the Court pursuant to 15 U.S.C. § 2605(f).

169. Ocwen's conduct appears to be a pattern and practice of misconduct with many consumers. Plaintiffs have been victims of this pattern of misconduct. For each violation of 12 U.S.C. § 2605(e), Ocwen is also liable to Plaintiffs for additional damages up to $1,000 per violation.

170. Plaintiffs are also entitled to recover costs and attorneys' fees from Ocwen in an amount to be determined by the Court pursuant to 12 U.S.C. § 2605(f)(3).

WHEREFORE, Plaintiffs each demand judgment for actual, statutory and punitive damages against Defendants, jointly and severally; for their attorneys' fees and costs; for prejudgment and post-judgment interest at the judgment rate; specific performance and injunctive relief; and such other relief the Court deems just and proper.

TRIAL BY JURY IS DEMANDED

Respectfully Submitted,
Reginald Mitchell and Mary Mitchell

By Susan M. Rotkis
Counsel

Leonard A. Bennett, VSB#37523
Susan M. Rotkis, VSB#40693
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd. 1-A
Newport News, VA 23601
(757) 930-3660 – Telephone
(757) 930-3662 – Facsimile
Email: lenbennett@clalegal.com
Email: srotkis@clalegal.com
Counsel for Plaintiff